

Application No. 10/772,746

REMARKS

First, the Applicant would like to thank the Examiner for extending the courtesy of an interview with the undersigned on January 19, 2006, to discuss the above identified application and the reconsideration of the pending claims thereof. The Applicant acknowledges the content of the interview summary (Form PTOL-413) prepared by the Examiner, dated January 19, 2006. Furthermore, the following remarks include the issues addressed in the interview and may be considered a summary of the interview as well as a reply to the Office Action.

The Examiner has rejected claims 13-15 and 19-24 under 35 U.S.C. §103(a) as being unpatentable over Willemsen (U.S. Patent No. 5,832,687) in view of Bergevin (U.S. Patent No. 5,586,408); claims 1-7 and 9-12 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,571,529 in view of Bergevin; claims 1-4, 13, 15 and 16 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,695,544 in view of Bergevin; and claims 13-15, and 17-23 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,817,154 in view of Bergevin. In response, Applicants respectfully traverse the above-mentioned rejections and respectfully request reconsideration by the Examiner in view of the following remarks.

With regards to the rejection of claims 13-15 and 19-24 under 35 U.S.C. §103(a) as being unpatentable over Willemsen in view of Bergevin, the Applicant respectfully traverses the Examiner's assertion that "it would have been obvious to one having ordinary skill in the art of containment at the time of the invention to modify the device shown by Willemsen '687, such that it would include a plurality of apertures since it has been held that mere duplication of the

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essential working parts of a device involves only routine skill in the art". Willemsen teaches a manually *sealable* orifice positioned on the bottom of the block that is intended to seal the block. Willemsen does not disclose or suggest one or more apertures positioned on the top panel and/or wall assembly of the retaining wall blocks, which are intended to allow for the growth of seeds to a retaining wall exterior. It would not be a simple duplication of essential working parts of the Willemsen device to position one or more of the orifice(s) that were not *sealable* on the top panel or wall assembly to allow vegetation to visibly grow to the exterior of the deterioration resistant retaining wall and would be counterintuitive to a person of ordinary skill in the art in view of the *sealable* nature of the orifices described.

Additionally, the Applicants disagree with the Examiners assertion that a motivation to promote propagation of vegetation exists in the combined teachings of Bergevin and Willemsen. Actually, the positioning of one or more apertures on the top panel and/or wall assembly of the Willemsen device would be contrary to the understanding of one of ordinary skill in the art in view of the teachings of Willemsen, since such an inclusion of one or more *sealable* orifices on the top panel or wall assembly would not allow the growth of vegetation to the exterior of the block, because the orifices are intended to be sealed. Furthermore, Willemsen teaches away from actions that would hinder the containment function desired by some of the Willemsen embodiments. For example, Willemsen only discloses a sealable orifice positioned on the bottom panel that is sealed with a manual or self closing valve to contain air or other flowing materials, such as water and sand. Hence, adding one or more apertures to the top panel and/or wall assembly that does not include a manual or self closing valve would not contain the flowing material and ultimately would not perform the containment function as described or suggested in Willemsen. Therefore, the Applicants respectfully assert that the inclusion of apertures on the top

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panel and/or wall assembly is not a duplication of the essential working parts of the Willemssen device and Willemssen effectively teaches away from the inclusion of such apertures. In view of the above remarks, the Applicants respectfully request that the Examiner find claims 13-15 and 19-24 allowable.

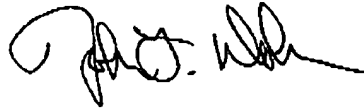
The Examiner has also provisionally rejected claims 1-7 and 9-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent Nos. 6,571,529, 6,695,544 or 6,817,154 in view of Bervegin. The Applicants respectfully traverse the rejection and disagree with the Examiners assertion that "it would have been obvious to those of ordinary skill in the art of retaining walls at the time the invention was made to modify the device claimed in either the '529, '544 or '144 references such that it would include a plurality of apertures". However, to advance prosecution of this Application and to obtain allowance on allowable claims at the earliest possible date, the Applicants agree to file a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome the rejection based on nonstatutory double patenting upon receiving notice of the allowability of the claims. It is noted that no admission may be inferred by this response or any terminal disclaimer filed in the present application and the Applicants reserve the right to pursue similar claims in the future.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

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The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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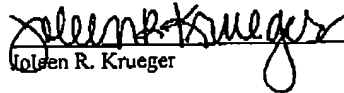
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February 7, 2006
Date


Volker R. Krueger